

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 843

FINAL READING

Introduced by Pansing Brooks, 28; Scheer, 19; Fox, 7; Brasch, 16; Cook, 13; Craighead, 6; Crawford, 45; Ebke, 32; Howard, 9; Sullivan, 41; Campbell, 25.

Read first time January 08, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
2 81-2010.03, Reissue Revised Statutes of Nebraska, section 28-801,
3 Revised Statutes Cumulative Supplement, 2014, and sections 81-1415,
4 81-1416, and 81-1423, Revised Statutes Supplement, 2015; to provide
5 immunity from prosecution for prostitution; to provide for a motion
6 to dismiss a prostitution charge as prescribed; to transfer, change,
7 and eliminate provisions relating to payment for sexual assault
8 forensic medical examinations; to create a fund and a program; to
9 provide for an administrator; to harmonize provisions; to provide
10 operative dates; to repeal the original sections; and to outright
11 repeal sections 13-607 and 13-608, Reissue Revised Statutes of
12 Nebraska.
- 13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-801, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 28-801 (1) Except as provided in subsection (5) of this section, any
4 person who performs, offers, or agrees to perform any act of sexual
5 contact or sexual penetration, as those terms are defined in section
6 28-318, with any person not his or her spouse, in exchange for money or
7 other thing of value, commits prostitution.

8 (2) Any person convicted of violating subsection (1) of this section
9 shall be punished as follows:

10 (a) If such person has had no prior convictions or has had one prior
11 conviction, such person shall be guilty of a Class II misdemeanor. If the
12 court places such person on probation, such order of probation shall
13 include, as one of its conditions, that such person shall satisfactorily
14 attend and complete an appropriate mental health and substance abuse
15 assessment conducted by a licensed mental health professional or
16 substance abuse professional authorized to complete such assessment; and

17 (b) If such person has had two or more prior convictions, such
18 person shall be guilty of a Class I misdemeanor. If the court places such
19 person on probation, such order of probation shall include, as one of its
20 conditions, that such person shall satisfactorily attend and complete an
21 appropriate mental health and substance abuse assessment conducted by a
22 licensed mental health professional or substance abuse professional
23 authorized to complete such assessment.

24 (3) It is an affirmative defense to prosecution under this section
25 that such person was a trafficking victim as defined in section 28-830.

26 (4) For purposes of this section, prior conviction means any
27 conviction on or after July 14, 2006, for violation of subsection (1) of
28 this section or any conviction on or after July 14, 2006, for violation
29 of a city or village ordinance relating to prostitution.

30 (5) If the law enforcement officer determines, after a reasonable
31 detention for investigative purposes, that a person suspected of or

1 charged with a violation of subsection (1) of this section is (a) a
2 person engaging in those acts as a direct result of being a trafficking
3 victim as defined in section 28-830, such person shall be immune from
4 prosecution for a prostitution offense or (b) a person under eighteen
5 years of age, such person shall be immune from prosecution for a
6 prostitution offense under this section and shall be subject to temporary
7 custody under section 43-248 and further disposition under the Nebraska
8 Juvenile Code. A law enforcement officer who takes a person under
9 eighteen years of age into custody under this section shall immediately
10 report an allegation of a violation of section 28-831 to the Department
11 of Health and Human Services which shall commence an investigation within
12 twenty-four hours under the Child Protection and Family Safety Act.

13 (6)(a) A person charged with a violation of this section may file a
14 motion to dismiss the charge if the charge was the result of the person
15 having been a trafficking victim as defined in section 28-830. The motion
16 shall be in writing, describe the supporting evidence with particularity,
17 and include copies of any documents showing that the moving party is
18 entitled to relief under this subsection.

19 (b) The court shall hold a hearing on the motion, except that the
20 court may dismiss a motion without a hearing if the court finds that the
21 motion fails to assert a claim for which relief may be granted.

22 (c) The court shall grant the motion if it finds by a preponderance
23 of the evidence that:

24 (i) The moving party was charged with prostitution in violation of
25 this section; and

26 (ii) The charge was obtained as a result of the moving party's
27 having been a trafficking victim as defined in section 28-830.

28 (d) If the motion is granted, the court shall dismiss the charge.

29 Sec. 2. Section 81-2010.03, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 ~~81-2010.03~~ (1) The full out-of-pocket cost or expense that may be

1 charged to a sexual assault victim in connection with a forensic medical
2 examination shall be paid from the Sexual Assault Payment Program Cash
3 Fund. A report of a forensic medical examination shall not be remitted to
4 the patient or his or her insurance for payment for by the Nebraska State
5 Patrol if the patrol is the primary investigating law enforcement agency
6 investigating the reported sexual assault.

7 (2) Except as provided under section 81-2010, all forensic DNA tests
8 shall be performed by a laboratory which is accredited by the American
9 Society of Crime Laboratory Directors/ ~~LAB~~-Laboratory Accreditation
10 Board ~~or the National Forensic Science Technology Center~~ or by any other
11 national accrediting body or public agency which has requirements that
12 are substantially equivalent to or more comprehensive than those of the
13 society ~~or center~~.

14 (3) The full out-of-pocket cost or expense to be paid from the
15 Sexual Assault Payment Program Cash Fund for a forensic medical
16 examination described in subsection (1) of this section shall include:

17 (a) An examiner's fee for:

18 (i) Examination of physical trauma;

19 (ii) Determination of penetration or force;

20 (iii) Patient interview; and

21 (iv) Collection and evaluation of evidence;

22 (b) An examination facility fee for the:

23 (i) Emergency room, clinic room, office room, or child advocacy
24 center; and

25 (ii) Pelvic tray and other medically required supplies; and

26 (c) The laboratory fees for collection and processing of specimens
27 for criminal evidence, the determination of the presence of any sexually
28 transmitted disease, and pregnancy testing.

29 (4) There is established within the Department of Justice, under the
30 direction of the Attorney General, the position of administrator for the
31 Sexual Assault Payment Program. The purpose of the program and the

1 responsibilities of the administrator shall be to coordinate the
2 distribution of forensic medical examination kits to health care
3 providers at no cost to the providers, oversee forensic medical
4 examination training throughout the state, and coordinate payments from
5 the Sexual Assault Payment Program Cash Fund.

6 (5) The Sexual Assault Payment Program Cash Fund is created. The
7 fund shall be administered by the commission. The fund shall consist of
8 any money appropriated to it by the Legislature and any money received by
9 the commission for the program, including federal and other public and
10 private funds. The fund shall be used for the payment of the full out-of-
11 pocket costs or expenses for forensic medical examinations pursuant to
12 subsection (3) of this section, for the purpose set forth in subsection
13 (4) of this section, and for the purchase of forensic medical examination
14 kits. The fund shall be used to pay only those charges determined by the
15 commission to be reasonable and fair. The fund shall be used to pay up to
16 two hundred dollars for the examiner's fee and up to three hundred
17 dollars for the examination facility fee. The examiner and facility shall
18 provide additional documentation as determined by the commission for
19 payment of charges in excess of such amounts. The fund may also be used
20 to facilitate programs that reduce or prevent the crimes of domestic
21 violence, dating violence, sexual assault, stalking, child abuse, child
22 sexual assault, human trafficking, labor trafficking, or sex trafficking
23 or that enhance the safety of victims of such crimes. Any money in the
24 fund available for investment shall be invested by the state investment
25 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
26 State Funds Investment Act.

27 Sec. 3. Section 81-1415, Revised Statutes Supplement, 2015, is
28 amended to read:

29 81-1415 As used in sections 81-1415 to 81-1426.01 and section 2 of
30 this act, unless the context otherwise requires: Commission means the
31 Nebraska Commission on Law Enforcement and Criminal Justice.

1 Sec. 4. Section 81-1416, Revised Statutes Supplement, 2015, is
2 amended to read:

3 81-1416 There is hereby created the Nebraska Commission on Law
4 Enforcement and Criminal Justice. The commission shall educate the
5 community at large to the problems encountered by law enforcement
6 authorities, promote respect for law and encourage community involvement
7 in the administration of criminal justice. The commission shall be an
8 agency of the state, and the exercise by the commission of the powers
9 conferred by the provisions of sections 81-1415 to 81-1426.01 and section
10 2 of this act shall be deemed to be an essential governmental function of
11 the state.

12 Sec. 5. Section 81-1423, Revised Statutes Supplement, 2015, is
13 amended to read:

14 81-1423 The commission shall have authority to:

15 (1) Adopt and promulgate rules and regulations for its organization
16 and internal management and rules and regulations governing the exercise
17 of its powers and the fulfillment of its purposes under sections 81-1415
18 to 81-1426.01 and section 2 of this act;

19 (2) Delegate to one or more of its members such powers and duties as
20 it may deem proper;

21 (3) Coordinate and jointly pursue its activities with the Governor's
22 Policy Research Office;

23 (4) Appoint and abolish such advisory committees as may be necessary
24 for the performance of its functions and delegate appropriate powers and
25 duties to them;

26 (5) Plan improvements in the administration of criminal justice and
27 promote their implementation;

28 (6) Make or encourage studies of any aspect of the administration of
29 criminal justice;

30 (7) Conduct research and stimulate research by public and private
31 agencies which shall be designed to improve the administration of

1 criminal justice;

2 (8) Coordinate activities relating to the administration of criminal
3 justice among agencies of state and local government;

4 (9) Cooperate with the federal and other state authorities
5 concerning the administration of criminal justice;

6 (10) Accept and administer loans, grants, and donations from the
7 United States, its agencies, the State of Nebraska, its agencies, and
8 other sources, public and private, for carrying out any of its functions,
9 except that no communications equipment shall be acquired and no approval
10 for acquisition of communications equipment shall be granted without
11 receiving the written approval of the Director of Communications of the
12 office of Chief Information Officer;

13 (11) Enter into contracts, leases, and agreements necessary,
14 convenient, or desirable for carrying out its purposes and the powers
15 granted under sections 81-1415 to 81-1426.01 and section 2 of this act
16 with agencies of state or local government, corporations, or persons;

17 (12) Acquire, hold, and dispose of personal property in the exercise
18 of its powers;

19 (13) Conduct random annual audits of criminal justice agencies to
20 verify the accuracy and completeness of criminal history record
21 information maintained by such agencies and to determine compliance with
22 laws and regulations dealing with the dissemination, security, and
23 privacy of criminal history information;

24 (14) Do all things necessary to carry out its purposes and for the
25 exercise of the powers granted in sections 81-1415 to 81-1426.01 and
26 section 2 of this act, except that no activities or transfers or
27 expenditures of funds available to the commission shall be inconsistent
28 with legislative policy as reflected in substantive legislation,
29 legislative intent legislation, or appropriations legislation;

30 (15) Exercise budgetary and administrative control over the Crime
31 Victim's Reparations Committee and the Jail Standards Board; and

1 (16) Do all things necessary to carry out sections 81-1843 to
2 81-1851.

3 Sec. 6. Sections 2, 3, 4, 5, 8, and 9 of this act become operative
4 on July 1, 2017. The other sections of this act become operative on their
5 effective date.

6 Sec. 7. Original section 28-801, Revised Statutes Cumulative
7 Supplement, 2014, is repealed.

8 Sec. 8. Original section 81-2010.03, Reissue Revised Statutes of
9 Nebraska, and sections 81-1415, 81-1416, and 81-1423, Revised Statutes
10 Supplement, 2015, are repealed.

11 Sec. 9. The following sections are outright repealed: Sections
12 13-607 and 13-608, Reissue Revised Statutes of Nebraska.